Lim Wen Jeng v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–69 OF 2008(B)
ZAKI AZMI CHIEF JUSTICE, NIK HASHIM AND ABDUL AZIZ MOHAMAD FCJJ
17 NOVEMBER 2008

Administrative Law — Exercise of administrative powers — Detention — Habeas corpus — Advisory Board's failure to invoke s 9 of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 to summon attendance of material witnesses — Whether amounted to breach of mandatory procedural requirement — Whether appellant deprived of right of representation guaranteed under art 151(1)(a) of the Federal Constitution — Emergency (Public Order and Prevention of Crime) Ordinance 1969 ss 4(1) & 9

The appellant applied to the Shah Alam High Court for a writ of habeas corpus for his release against a detention order issued under s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'). The appellant's complaint was that the Advisory Board ('the board') had refused an application for an adjournment in order to secure the attendance of two witnesses namely, Fong Mun Cheong who was under restricted residence in Kuala Terengganu and the investigation officer of the case and that this had deprived him of the right to make necessary oral representations at the hearing before the board. The appellant averred that these two witnesses were material and that without their evidence he would not be able to show his evidence. The appellant had written to the board on 27 November 2007, two days before the hearing date, requesting the board to exercise its powers under s 9 of the Ordinance to summon the attendance of these two witnesses. Although the board, in its letter dated 28 November 2007, approved the appellant's request to call the two witnesses and copied this letter to the witnesses it did not invoke its powers under s 9 of the Ordinance and summon the witnesses. On 29 November 2007 the appellant applied for a third adjournment because the two witnesses requested by him were not present but the application was refused by the board on the grounds that the appellant had not utilised the time afforded by the two previous adjournments on 13 October 2007 and 13 November 2007, at the request of the appellant, to apply for the summoning of the witnesses. The appellant contended that the board was mistaken in its reason for refusing the

adjournment. The respondent submitted that as the case had already been adjourned twice and as the next hearing date was on 29 November 2007, which was two days after the appellant's request for the board to invoke s 9 of the Ordinance, the board had chosen not to invoke s 9. The High Court held that the non-invocation of s 9 of the Ordinance did not prejudice the appellant in any way and therefore refused the appellant's application for his release. Hence this appeal wherein the appellant contended that s 9 was a mandatory procedural requirement that must be exercised by the board and that the failure of the board to invoke s 9 of the Ordinance contravened his constitutional right under art 151(1)(a) of the Constitution thereby prejudicing his right for representations before the board.

Held, dismissing the appeal:

(1) (per **Nik Hashim FCJ, Zaki Azmi Chief Justice** concurring). Section 9 of the Ordinance, an empowering provision, quite clearly confers powers on the board to summon witnesses. However, by its terms s 9 is not a mandatory procedural requirement by which the board can be compelled to exercise the power of summoning the witnesses as required by the appellant. If the appellant wished to examine any witnesses he should make them available at the hearing and no obligation could be cast on the board to summon them. Thus there was no non-compliance of the procedural requirement in this case. The board's decisions to reject the appellant's request for the third adjournment of the hearing and its refusal to invoke s 9 of the Ordinance to summon the two witnesses were made lawfully (see paras 12 & 15).

(2) (per **Nik Hashim FCJ, Zaki Azmi Chief Justice** concurring). The proceedings before the board had to be completed expeditiously because the board is under an obligation under s 6(1) of the Ordinance to submit its report to the Yang di-Pertuan Agong within three months from the date of receipt of the appellant's representations to the board. Thus the board was justified in citing the two days notice by the appellant to summon the two witnesses as too short a notice to invoke s 9 of the Ordinance. In addition, the appellant had failed to state specifically as to what evidence the two witnesses were to testify before the board other than to aver that they were material witnesses. This coupled with the fact that the hearing of the representations before the board was adjourned twice before showed that the appellant was not serious enough in his effort to present his representations soonest possible before the board. This also goes to prove that ample opportunity had already been given to the appellant to secure the attendance of the two witnesses but he had failed to avail himself of the

opportunity. As such it would not be unreasonable for the board to reject his request for a further adjournment of the hearing (see paras 13–14).

(3) (per **Abdul Aziz Mohamad FCJ** dissenting). The appellant might have only known on 28 November 2007 that the board was not invoking its powers to summon the two witnesses but was instead leaving it to the appellant to secure their attendance at the hearing. Furthermore the board's letter to the appellant dated 28 November 2007 approving the appellant's request to call the two witnesses did not specifically state that the board itself was not going to summon the two witnesses. In the circumstances the appellant may have thought that the board had already summoned the two witnesses pursuant to his application and that the letter of 28 November 2007 copied to the two witnesses was merely a follow-up on the summons. Hence the refusal of the adjournment was made for the wrong reasons and was unjustified. The appellant was thereby deprived of his right to have his witnesses to support his representations and this prejudiced his right to an opportunity to make all necessary representations (see paras 26–27).

[Bahasa Malaysia summary

Perayu memohon kepada Mahkamah Tinggi Shah Alam untuk satu writ habeas corpus bagi pembebasannya daripada perintah tahanan yang dikeluarkan di bawah s 4(1) Ordinan Darurat (Keselamatan Awam dan Pencegahan Jenayah) 1969 ('Ordinan tersebut'). Aduan perayu adalah bahawa Lembaga Penasihat ('lembaga') telah menolak satu permohonan untuk penangguhan bagi membolehkan kehadiran dua saksi iaitu, Fong Mun Cheong yang berada di dalam tahanan terhad di Kuala Terengganu dan pegawai penyiasat kes tersebut dan ini telah menafikan haknya untuk membuat pernyataan-pernyataan lisan yang sepatutnya semasa perbicaraan di hadapan lembaga. Perayu menegaskan bahawa kedua-dua saksi ini adalah penting dan tanpa keterangan mereka dia tidak dapat mengemukakan keterangannya. Perayu telah menulis kepada lembaga pada 27 November 2007, dua hari sebelum tarikh sebutan, memohon lembaga menjalankan kuasanya di bawah s 9 Ordinan tersebut untuk memanggil kehadiran dua saksi tersebut. Walaupun lembaga, di dalam suratnya yang bertarikh 28 November 2007, meluluskan permohonan perayu untuk memanggil kedua-dua saksi tersebut dan menyalin surat ini kepada saksi-saksi tersebut ia tidak menggunakan kuasanya di bawah s 9 Ordinan tersebut untuk memanggil kedua-dua saksi tersebut. Pada 29 November 2007 perayu memohon untuk penangguhan ketiga kerana kedua-dua saksi yang diminta olehnya tidak hadir tetapi permohonan tersebut telah ditolak oleh lembaga atas alasan bahawa perayu tidak menggunakan masa yang diberikan dalam dua penangguhan sebelum ini pada 13 Oktober 2007 dan 13 November

2007, atas permintaan perayu, untuk memohon pemanggilan kedua-dua saksi tersebut. Perayu menegaskan bahawa lembaga telah tersilap dalam alasannya menolak penangguhan tersebut. Responden berhujah bahawa memandangkan kes tersebut telah ditangguh dua kali dan memandangkan tarikh perbicaraan seterusnya adalah pada 20 November 2007, iaitu dua hari selepas permohonan perayu untuk lembaga merujuk s 9 Ordinan tersebut, lembaga telah memilih untuk tidak merujuk kepada s 9. Mahkamah Tinggi memutuskan bahawa kegagalan merujuk kepada s 9 Ordinan tersebut tidak menjejaskan perayu dalam sebarang cara dan oleh itu menolak permohonan perayu untuk pembebasannya. Maka rayuan ini di mana perayu menegaskan bahawa s 9 adalah satu keperluan prosedur yang mandatori yang mesti dijalankan oleh lembaga tersebut dan kegagalan lembaga untuk merujuk kepada s 9 Ordinan tersebut bercanggah dengan hak perlembagaannya di bawah perkara 151(1)(a) Pelembagaan dan oleh itu menjejaskan haknya untuk pernyataan-pernyataan di hadapan lembaga.

Memutuskan, menolak rayuan tersebut:

(1) (oleh **Nik Hashim HMP, Zaki Azmi KHN** bersetuju). Seksyen 9 Ordinan, peruntukan yang memberi kuasa, jelas memberi kuasa kepada lembaga untuk memanggil saksi-saksi. Walau bagaimanapun mengikut terma-termanya s 9 bukanlah keperluan prosedur yang mandatori yang mana membolehkan lembaga tersebut menjalankan kuasa untuk memanggil saksi-saksi seperti yang diperlukan oleh perayu. Jika perayu berhajat untuk memeriksa mana-mana saksi dia harus membuatkan mereka hadir semasa perbicaraan dan tiada tanggungjawab boleh dikenakan ke atas lembaga untuk memanggil mereka. Maka tidak terdapat ketidakpatuhan kepada keperluan prosedur dalam kes ini. Keputusan lembaga untuk menolak permintaan perayu untuk penangguhan ketiga perbicaraan tersebut dan keengganannya untuk merujuk kepada s 9 Ordinan untuk memanggil kedua-dua saksi tersebut adalah dibuat mengikut undang-undang (lihat perenggan 12 & 15).

(2) (oleh **Nik Hashim HMP, Zaki Azmi KHN** bersetuju). Prosiding-prosiding di hadapan lembaga mesti disiapkan segera kerana lembaga tersebut adalah di bawah tanggungjawab di bawah s 6(1) Ordinan untuk mengemukakan laporannya kepada Yang di-Pertuan Agong dalam masa tiga bulan dari tarikh penerimaan pernyataan-pernyataan perayu kepada lembaga. Oleh itu lembaga tersebut adalah berjustifikasi dalam menyatakan notis dua hari tersebut oleh perayu untuk memanggil kedua-dua saksi tersebut sebagai satu notis yang terlalu singkat untuk merujuk s 9 Ordinan. Tambahan, perayu telah gagal untuk menyatakan secara spesifik berkenaan

keterangan apa yang kedua-dua saksi tersebut harus kemukakan di hadapan lembaga selain daripada menegaskan bahawa mereka adalah saksi penting. Ini berserta dengan fakta bahawa perbicaraan pernyataan-pernyataan di hadapan lembaga telah ditangguhkan sebelum ini menunjukkan perayu tidak cukup serius dalam usahanya untuk mengemukakan pernyataan-pernyataannya secepat mungkin di hadapan lembaga. Ini juga membuktikan bahawa peluang yang secukupnya telah diberikan kepada perayu untuk memastikan kehadiran kedua-dua saksi tersebut tetapi dia telah gagal untuk menggunakan peluang tersebut. Oleh sebab itu tidak mustahil bagi lembaga untuk menolak permintaannya untuk terus menangguh perbicaraan tersebut (lihat perenggan 13–14).

(3) (oleh **Abdul Aziz Mohamad HMP** menentang). Perayu mungkin hanya mengetahui pada 28 November 2007 bahawa lembaga tidak menggunakan kuasanya untuk memanggil kedua-dua saksi tersebut tetapi sebaliknya menyerahkan kepada perayu untuk memastikan kehadiran mereka semasa perbicaraan. Tambahan lagi surat lembaga kepada perayu bertarikh 28 November 2007 meluluskan permintaan perayu untuk memanggil kedua-dua saksi tersebut tidak secara spesifik menyatakan yang lembaga sendiri tidak akan memanggil saksi-saksi tersebut. Dalam hal ini perayu mungkin telah menyangka bahawa lembaga telahpun memanggil kedua-dua saksi tersebut berikutan daripada permohonannya dan bahawa surat bertarikh 28 November 2007 itu yang dibuat salinan kepada kedua-dua saksi tersebut hanyalah satu susulan bagi arahan tersebut. Maka penolakan penangguhan telah dibuat untuk alasan yang salah dan tidak berjustifikasi. Perayu oleh itu telah dihalang dari haknya untuk mendapatkan saksi-saksinya menyokong pernyataan-pernyataannya dan ini menjejaskan haknya untuk satu peluang untuk membuat semua pernyataan-pernyataan yang sepatutnya (lihat perenggan 26–27).]

Notes

For cases on detention, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 22–23.

Cases referred to

AK Roy v Union of India AIR 1982 SC 710 (refd)

Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1991] 3 MLJ 28; [1991] 3 CLJ (Rep) 649, HC (refd)

Legislation referred to

Emergency (Public Order and Prevention of Crime) Ordinance 1969 ss 4(1), 6(1), 9, 11

Federal Constitution arts 151(1)(a), 151(3)

Public Order and Prevention of Crime (Procedure) Rules 1972 r 3(2)

Appeal from: Criminal Appeal No 44–237 of 2007 (High Court, Shah Alam)

Suresh Thanabalasingam (P Visnuvarman and Alvinthiren with him) (Kuldip and Co) for the appellant.
Abd Wahab Mohamad (Deputy Public Prosecutor, Attorney General's Chambers) for the respondents.

Nik Hashim FCJ (delivering majority judgment):

[1] The appellant was detained for a period of 18 months with effect from 18 September 2007 pursuant to a detention order dated on the same date issued under s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'). His application for a writ of habeas corpus for his release was refused by the Shah Alam High Court on 13 June 2008. Hence his appeal to this court.

[2] The appellant had averred in his affidavit in support of the application at p 20 para 30 of the record that during the hearing before the Advisory Board ('the board') he had made an application for an adjournment as the two witnesses requested by him were not present. In reply to the said averment the secretary of the board in her affidavit at p 127 para 8 of the record averred that the hearing of the appellant's representations was adjourned twice on 23 October 2007 and 13 November 2007 at the request of the appellant on the ground that his counsel Encik Suresh was unable to attend the hearing. The secretary further averred that the appellant's counsel had sent a letter dated 27 November 2007 requesting the board to exercise its power under s 9 of the Ordinance to summon the attendance of two witnesses requested by the appellant namely, Fong Mun Cheong who was under restricted residence in Kuala Terengganu and the investigation officer of the case (see p 150 of the record). The next hearing date was 29 November 2007.

[3] On 28 November 2007 the board replied the appellant's letter whereupon the board approved his request to call the two witnesses.

[4] It is worthy of note that though the board did not invoke its powers under s 9 of the Ordinance, it nevertheless carbon copied its letter to the Ibu Pejabat Polis Daerah Kuala Terengganu where the witness Fong Mun Cheong was residing under restricted residence and to the Ketua Penolong Pengarah Jabatan Siasatan Jenayah D7, Bukit Aman Kuala Lumpur where the

investigation officer was attached. The reason for not invoking s 9 of the Ordinance as averred by the secretary was because of the short notice of two days and the failure of the appellant to avail himself of the benefit of the two earlier adjournments to obtain the witnesses as requested by him.

[5] In dismissing the appellant's application on the ground that the appellant had failed to establish non-compliance of the procedure on the part of the board, the learned High Court judge (Syed Ahmad Helmy J) said:

> Upon evaluating the affidavit evidence filed herein, namely encll 3 and 19 affirmed by the applicant and the opposing affidavits of the secretary of the advisory board in encll 13 and 20, I am of the considered view that s 9 of the Ordinance is an empowering section which confers powers on the Advisory Board to summon witnesses and compel the production of documents. It is the prerogative of the board to exercise such powers and it cannot be compelled to exercise such power as contended and urged by the applicant in the instant case as the board was acting within its prerogative by not issuing summonses for the attendance of the two witnesses requested by the applicant. The non-invocation of its power under s 9 does not in any way prejudice the applicant more so in the light of the board's approval for the applicant to call the two witnesses, which the applicant can do by writing to the Chief Police Officer of Terengganu and/or to the Minister of Home Affairs for the production of the two witnesses. Interestingly there is no evidence of any attempt made by the applicant to secure their attendance.

[6] Before us, learned counsel for the appellant contended essentially on two grounds:

(1) Section 9 is a mandatory procedural requirement that must be exercised by the board when requested by the appellant to do so. Failure to do so would amount to a breach of mandatory procedural requirement by the board.

(2) The right of the appellant for representations is being guaranteed under art 151(1)(a) of the Federal Constitution ('the Constitution'). The failure of the board to invoke s 9 on summoning the witnesses required by the appellant after application had been made shall invalidate his detention order because his right for representations had been prejudiced. The case of *Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1991] 3 MLJ 28; [1991] 3 CLJ (Rep) 649 was cited in support.

[7] The thrust of the appellant's contention in this case is that the failure of the board to invoke s 9 contravenes his constitutional right under art 151(1)(a) of the Constitution thereby prejudicing his right for representations before the board.

[8] To put the matter in perspective, it will be useful to reproduce s 9 of the Ordinance and art 151(1)(a) of the Constitution. Section 9 reads as follows:

> Power to summon witnesses
>
> Every Advisory Board shall, for the purposes of this Ordinance, but subject to the provision of section 11, have all the powers of a Court for the summoning and examination of witnesses, the administration of oaths or affirmations, and for compelling the production of documents.

[9] Article 151 provides:

> Restrictions on preventive detention
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> (1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention —
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> (a) the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him on the grounds for his detention and, subject to Clause (3), the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;
>
> (2)(b) ...
>
> (3) This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

[10] On the appellant's right for representations before the board, learned senior federal counsel for the respondent drew our attention to the case of *AK Roy v Union of India* AIR 1982 SC 710 where the Indian Supreme Court said at p 751 para 105:

> ... The detenu may therefore offer oral and documentary evidence before the advisory board in order to rebut the allegations which were made against him. We would only like to add that if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation can be cast on the advisory board to summon them. The Advisory Board, like any tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power to limit the time within which the detenu must complete his evidence. We consider it necessary to make this observation particularly in view of the fact that the Advisory Board is under an obligation under s 11(1) of the Act to submit its report to the appropriate government within seven weeks from the date of detention of the person concerned. The proceedings before the Advisory Board have therefore to be completed with the utmost expedition.

[11] In my opinion, the above principle is equally applicable to our case.

[12] In the present case, s 9 of the Ordinance is quite clear in its provision. I agree with the learned judge that the section is an empowering provision which, subject to disclosure under s 11 of facts or production of documents which are against the national interest to disclose or produce (see also art 151(3) of the Constitution), confers powers on the board to summon witnesses and compel the production of documents. By its terms, s 9 (unlike r 3(2) of the Public Order and Prevention of Crime (Procedure) Rules 1972 ('the POPOC') which requires service of certain number of copies of Form 1 as ruled in *Puvaneswaran*, as a mandatory requirement), is not a mandatory procedural requirement that the board can be compelled to exercise the power of summoning the witnesses as required by the appellant. If the appellant wishes to examine any witnesses he should make them available at the hearing and no obligation can be cast on the board to summon them.

[13] The board, like any other tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power to limit the time within which the appellant must complete his evidence for the board is under an obligation under s 6(1) of the Ordinance to submit its report to the Yang di-Pertuan Agong within three months from the date of receipt of the appellant's representations by the board. The proceedings before the board have to be completed expeditiously. Thus, the reason of too short a notice given by the secretary for not invoking s 9 to summon the two witnesses by the board as requested by the appellant cannot be said to be unjustified.

[14] Moreover, the appellant had failed to state specifically as to what evidence the two witnesses would testify before the board. The appellant in his affidavit at p 20 para 30 merely averred that the two witnesses were material and without their evidence he would not be able to show his innocence ('Pihak kami telah memaklumkan bahawa mereka adalah saksi yang amat material dan tanpa mereka, saya tidak dapat menunjukkan ketidakbersalahan saya'). It is to be noted that the hearing of the representations fixed on 23 October 2007 and 13 November 2007 before the board was adjourned at the request of the appellant. It appears therefore that the appellant was not serious enough in his effort to present his representations soonest possible before the board. With such material before the board, it would not be unreasonable for the board to reject his request for a further adjournment of the hearing that had been fixed on 29 November 2007. Ample opportunity had been given to the appellant to secure the attendance of two witnesses but he had failed to avail himself of the opportunity. And therefore, because of his failure, his right to an opportunity

of making representations before the board as provided for under art 151(1)(a) of the Constitution cannot be argued to have been prejudiced.

[15] In my view, there is no non-compliance of the procedural requirement in this case. The rejection of the appellant's request for the third adjournment of the hearing and the refusal of the board to invoke s 9 to summon the two witnesses were made lawfully. Consequently, I find no reason for interference with the impugned order and dismiss the appeal.

[16] My learned brother Zaki Azmi Chief Justice concurred with me in this judgment while my learned brother Abdul Aziz Mohamad FCJ dissented in his separate judgment.

Abdul Aziz Mohamad FCJ (delivering dissenting judgment):

[17] The appellant's complaint is that the Advisory Board refused his application for an adjournment in order to secure the presence of two witnesses, and therefore his right to an opportunity of making representations, guaranteed by art 151(1)(a), had been prejudiced.

[18] The respondents' stand on this point is as follows.

[19] The hearing had been adjourned twice, on 23 October 2007 and 13 November 2007, at the request of the appellant because his counsel was unable to be present. The next hearing date was 29 November 2007.

[20] On 27 November 2007, just two days before the hearing date, the appellant's solicitors, who were aware of the hearing date, wrote to the chairman of the Advisory Board an application that the board exercise its powers under s 9 of the Ordinance and summon two witnesses to be present at the hearing. They were Fong Mau Choong, a Kuala Terengganu restricted resident, and the investigating officer. The solicitors said that the witnesses would be able to show that the appellant was innocent.

[21] On 28 November 2007 the chairman of the Advisory Board wrote to the appellant's solicitors giving consent to their bringing the two witnesses to the hearing next day. The letter was copied to the police branches where the witnesses were. But the board itself did not summon them.

[22] The Advisory Board's reason for not summoning the witnesses under s 9 was because time was 'too short for it', the hearing being on 29 November 2007. The implication is that if the application had been made in sufficient time the advisory board would have summoned the witnesses.

A **[23]** On 29 November 2007 the witnesses — as was to be expected — were not present at the hearing and the appellant's counsel applied for another postponement so that the witnesses could be present. The Advisory Board refused the adjournment because, according to its secretary, the appellant's solicitors had not utilised the time afforded by the two previous
B adjournments to apply for the summoning of the witnesses.

[24] That is the respondents' stand. The appellant's stand is that the Advisory Board was mistaken in its reason for refusing the adjournment — that the appellant's solicitors had failed to avail themselves of the opportunity
C afforded by the two previous adjournments — because on 9 November 2007 the appellant's solicitors had already written to the advisory board to apply for the summoning of the two witnesses. The appellant averred that the Advisory Board received the letter on 12 November 2007. The letter is exhibited and bears the acknowledgment of receipt by the Advisory Board dated
D 12 November 2007. In fact, except for dates, the subsequent letter of 27 November 2007 was a replica of that letter of 9 November 2007.

[25] The secretary to the Advisory Board, in replying to the appellant's
E averments about the letter of 9 November 2007, did not make any statement about the letter. She did not deny its existence or receipt. Instead, this time she stated that the appellant and his solicitors had been given an opportunity to take steps to themselves bring the witnesses but had failed to avail themselves of the opportunity.

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[26] Now the only time that the appellant's solicitors might have known that the Advisory Board was leaving it to them to bring the witnesses was on 28 November 2007. There was insufficient time for them to themselves secure the attendance of the witnesses. Even the Advisory Board found that
G time was too short for it to summon the witnesses. Furthermore, the Advisory Board's letter of 28 November 2007 did not specifically state that the board itself was not going to summon the witnesses. The appellant's solicitors might have thought that the Advisory Board had already summoned the witnesses pursuant to their application of 9 November 2007 and that the copying of
H the letter of 28 November 2007 to the police branches was merely a follow-up on the summons.

[27] Hence the refusal of the adjournment on 29 November 2007 was made for the wrong reason and was therefore unjustified. The appellant was
I thereby deprived of his right to have his witnesses to support his representations and this prejudiced his right to an opportunity to make representations. He did make oral representations on 29 November 2007 but without the benefit of the two witnesses, who his solicitors claimed were important for his representations.

[28] I would therefore allow the appeal.

Appeal dismissed.

Reported by K Nesan